



02908.

(2) Defendant, Bassam Neiefeh, is a resident of the State of Rhode Island with an address of 30 Phillips Court, in the City of Cranston State of Rhode Island 02910.

#### JURISDICTION & VENUE

(3) Subject matter jurisdiction in this case is properly conferred in this Court pursuant to R.I. Gen. Laws § 42-17.1-2(21)(v), as amended, and R.I. Gen. Laws § 8-2-13, as amended.

(4) Personal jurisdiction over the Defendant in this case is properly conferred in this Court based upon Defendant's presence in, operation of, and ownership of real property located within the State of Rhode Island.

(5) Venue is properly placed in this Court pursuant to R.I. Gen. Laws § 42-17.1-2(21)(v) and R.I. Gen. Laws § 9-4-3, as amended.

#### FACTS

(6) According to the Town of Johnston land evidence records, RJJJ Enterprises, LLC is the owner of record for the subject property which is identified as Town of Johnston Assessor's Plat 40, Lot 100, and is located at 135 Putnam Avenue in the Town of Johnston, Rhode Island (the "Property").

(7) RJJJ Enterprises, LLC, Certificate of Organization/Registration from the State of Rhode Island Secretary of State was revoked on April 22, 2013.

(8) Bassam Naiefeh is the last known Manager of RJJJ Enterprises, LLC.

(9) The Property is operated as a retail gasoline service station and includes three underground storage tanks ("USTs" or "tanks") which are used for storage of petroleum products. (the "Facility").

(10) The Facility is registered with the Department pursuant to Section 6.00 of the

Department's *Regulations for Underground Storage Facilities Used for Petroleum Products and Hazardous Materials* (the "UST Regulations") as UST Facility # 01793.

(11) The USTs are registered with DEM as follows:

| <u>UST ID No.</u> | <u>Capacity</u> | <u>Substance Stored</u> |
|-------------------|-----------------|-------------------------|
| 004               | 3,000 gallons   | Heating Oil             |
| 005               | 10,000 gallons  | Gasoline                |
| 006               | 10,000 gallons  | Gasoline                |

(12) The USTs are subject to the UST Regulations.

(13) On or about March 8, 2013, the Department issued a letter by regular mail to all registered UST owner/operators, including the Defendant, that required the owners/operators to inspect their facility and complete and submit to the Department a Compliance Certification Checklist, a Certification Statement form and any necessary Return to Compliance Plans (the "Compliance Certification Forms") by June 30, 2013.

(14) On or about July 10, 2013, the Department sent a second letter by regular mail to all non-compliant registered UST owners/operators, including the Defendant, requiring the owners/operators to complete the Compliance Certification Forms by July 31, 2013.

(15) On or about November 14, 2013 the Department issued a Notice of Intent to Enforce to the Defendant requiring him to inspect the Facility and complete and submit the Compliance Certification Forms to DEM within fifteen (15) days.

(16) On or about April 14, 2014, the Department issued a NOV alleging violations of the UST Regulations for (1) requiring UST owners/operators to inspect their facility and complete and submit the *Compliance Certification Forms* within the time frame specified (Rule 8.03), and (2) for not submitting a *Certified UST Facility Operators Registration Form* to DEM to verify that

trained and certified UST facility operators were assigned to the Facility by August 1, 2012 and on duty at the facility during all operating hours (Rule 8.22).

(17) The NOV ordered the Defendant within sixty (60) days to:

- (a) Submit the Compliance Certification Forms to the DEM's Office of Compliance and Inspection ("OC&I") at 235 Promenade Street, Suite 220, Providence RI 02908-5767 in accordance with Rule 8.03 of the DEM's UST Regulations;
- (b) Assign at least one trained and certified Class A UST facility operator and at least one trained and certified Class B UST facility operator to the Facility in accordance with Rule 8.22 of the DEM's UST Regulations. Written verification of compliance shall be submitted to the OC&I;
- (c) Train all Facility employees as (at least) Class C UST facility operators and compile a written list of Class C UST facility operators that have been trained and assigned to the Facility, as per Rules 8.22 (A) and (D) of the DEM's UST Regulations. Written verification of compliance shall be submitted to the OC&I;
- (d) Complete a *Certified UST Facility Operators Registration Form* in accordance with Rule 8.22(A)(4) of the DEM's UST Regulations and submit the form to the DEM-Office of Waste Management at 235 Promenade Street, Suite 380, Providence, RI 0208-5767 along with copies of the Class A and Class B UST facility operators' examination certificates. Copies of the form and certificates shall also be submitted to the OC&I;
- (e) Pay the administrative penalty of eight thousand (\$8,000.00) dollars.

(18) The Defendant did not request an administrative hearing.

(19) The NOV and associated administrative penalties contained within (pursuant to *R.I. Gen. Laws* §§ 42-17.1.2(21)(vi) and 42-17.6-4(b)) automatically became a Final Compliance Order enforceable in Superior Court.

(20). The Property continues to be owned by the RJJJ Enterprises, LLC with the Defendant listed as the manager.

(21) Since the NOV was issued and became a Final Compliance Order, the Defendant has failed to comply with all terms of the Order and the all terms of the NOV.

(22) The Defendant's failure to comply with the NOV represents a continuing violation of the Department's UST Regulations.

(23) As of the date of the filing of this Complaint, the Defendant has failed to: (a) complete and submit a *Compliance Certification Checklist or Certification Statement*; and (b) pay the administrative penalty of eight (\$8,000.00) dollars as required by the NOV and the Final Compliance Order.

### **COUNT I**

#### *(Violation of Final Compliance Order)*

(24) Plaintiff hereby restates and incorporates by reference the allegations contained in Paragraphs 1 through 23 above.

(25) The NOV issued to the Defendant on or about April 14, 2014 was issued pursuant to R.I. Gen. Laws § 42-17.1-2(21).

(26) In accordance with R.I. Gen. Laws § 42-17.1-2(21), the aforementioned NOV notified the Defendant of the facts giving rise to the alleged violations; of the statutes and/or regulations violated; and of the Defendant's right to request an administrative hearing before DEM's Administrative Adjudicatory Division by filing a request for hearing within twenty (20) days of service of the NOV.

(27) Defendant, by failing to appeal the issuance of the NOV, is deemed to have waived his rights to an adjudicatory hearing resulting in the NOV automatically transforming in to a Final Compliance Order of the Department.

(28) Pursuant to *R.I. Gen. Laws* § 42-17.1-2(21)(vi), a Final Compliance Order is enforceable in the Superior Court through injunctive proceedings wherein the burden of proving error in the Final Compliance Order rests with the Defendant.

(29) Defendant has failed or refused to comply with the requirements of the NOV by performing the actions required and paying the administrative penalty as required.

(30) Each day on non-compliance represents a continuing violation of the Department's UST Regulations.

RELIEF REQUESTED

WHEREFORE, the Plaintiff, Janet L. Coit, in her capacity as Director of the Department, hereby requests that this honorable Court enter judgment in the Department's favor and grant the following relief:

Temporary, Preliminary and Permanent Injunctive Relief, ordering Defendants to:

- A. Immediately take all necessary actions to bring the Property into compliance with the UST Regulations by performing any and all actions required by the Department as specified in the NOV within sixty days (60) days:
  - a. Submit to DEM a completed UST Environmental Results Program *Compliance Certification Checklist*;
  - b. Submit to DEM a completed UST Environmental Results Program *Certification Statement* and any necessary *Return to Compliance Plans* for the Facility in accordance with Rule 8.03 of the UST Regulations;
- B. If Defendant fails to abide by the terms of paragraph A, as stated above within sixty (60) days, then the Defendant shall be restrained and enjoined from operating any business on the Property until such time as he is in compliance with the UST Regulations as stated above;
- C. Within thirty (30) days, remit to the Department the administrative penalty of Eight (\$8,000.00) Dollars as set forth in the NOV; and
- D. Such other relief as this Court deems just and equitable in accordance with the facts of this case.

VERIFICATION

I, Tracey D'Amadio Tyrrell, Supervising Environmental Scientist, Department of Environmental Management, Office of Compliance & Inspection, first being duly sworn upon oath, hereby state that to the best of my knowledge and belief, the facts contained in this Complaint and the exhibits attached hereto are, true and accurate.

\_\_\_\_\_  
Name: Tracey D'Amadio Tyrrell  
Title: Supervising Environmental Scientist

**STATE OF RHODE ISLAND  
COUNTY OF PROVIDENCE**

Subscribed and sworn to before me this \_\_\_\_\_ day of February, 2016.

\_\_\_\_\_  
Notary Public  
My commission expires:

Respectfully submitted,  
JANET L. COIT,  
in her capacity as DIRECTOR,  
Rhode Island Department of  
Environmental Management  
By her attorney:

Dated: February \_\_\_\_\_, 2016

/s/Tricia Quest  
Tricia Quest., Esq., RI Bar #7362  
RI DEM Office of Legal Services  
235 Promenade Street, 4th Floor  
Providence, RI 02908  
Telephone: (401) 222-6607  
Fax: (401) 222-3378  
tricia.quest@dem.ri.gov